

Florida's Property Insurance Market

Florida has always endured a complex property insurance market due its unpredictable weather and proneness to hurricane catastrophes. Recent issues, however, have nearly pushed the market to the brink of collapse. With the combination of insurance company insolvencies, excessive litigation from fraud, and the recent devastation from Hurricane Ian, Florida's crisis continues to worsen.

Insolvency

As fraudulent roofing claims continue to increase, so does Florida's already excessive litigation. In order to pay these costs, insurance companies have been increasing premiums to stay afloat, cancelling policies altogether, or declaring insolvency. Rating agencies such as Demotech assign financial strength ratings (FSR) to property insurers in Florida. This financial strength rating indicates an insurance company's ability to pay out covered claims.

On August 1, 2022, Demotech downgraded the FSR for United Property and Casualty Insurance (UPC) from an "A" (meaning exceptional) to an "M" (meaning moderate). If a homeowner's mortgage is federally backed by Freddie Mac or Fannie Mae and their insurance company is rated by Demotech, the company must have a rating of "A" or higher. If not, the homeowner is at risk of force-placed insurance.¹ In response to the downgrade, UPC withdrew its business in Florida, Texas, and Louisiana on August 25, 2022.

Weston and FedNat are additional examples of insurance companies that had their financial ratings withdrawn by Demotech:

- On August 4, 2022, Weston Property became the fifth insurance company to declare insolvency this year.
- On September 27, 2022, FedNat became the sixth Florida insurance company to declare insolvency this year, and nearly 30 others are on the state insurance regulator's watch list due to financial instability. FedNat attempted to stay afloat by cancelling more than 56,000 policies in May 2022 and transferring roughly 83,000 policies to a sister company in June.

What does this mean for homeowners?

The insolvencies represent yet another hit to Florida's worsening property insurance market. The financial stability of Florida's property insurance companies continues to weaken with the

¹ Force-placed insurance is an insurance policy placed on a property by a lender or when the property owners' own insurance is cancelled, has lapsed, or is deemed insufficient, and the borrower does not secure a replacement policy. This insurance allows the lender to protect its financial interest in the property.

destruction of Hurricane Ian and ongoing excessive litigation. Here's how homeowners are affected:

- Demotech must reflect this instability by downgrading the companies' financial strength ratings or withdrawing their rating altogether.
- Federally backed mortgage lenders such as Fannie Mae and Freddie Mac only accept "A" ratings from Demotech.
- When an insurance company is downgraded, homeowners who hold the policy are at risk of force-placed insurance. As a result of numerous insolvencies, increasing premiums, and insurance companies leaving the state, homeowners have been struggling to find affordable coverage. According to the Insurance Information Institute, Floridians are paying an average premium of \$4,231 for insurance compared to the U.S. average of \$1,544.²

As reasonable property insurance options grow scarce, homeowners are being forced to seek coverage with Citizens Property Insurance (Citizens), Florida's insurer of last resort:

- Citizens insured a total of 759,305 policies at the end of 2021 which grew to 1,145,178 at the end of 2022. According to Citizens, this number drastically increased as a result of "continued instability within the Florida insurance market."³
- Citizens expects premiums in 2023 to be the highest in its 20 year history.
- If the reserves of Citizens Property Insurance are wiped out, Florida residents could face multiyear surcharges on their homeowners' insurance.

How did we get here?

One of the main contributors to Florida's worsening property insurance crisis is excessive litigation resulting from fraudulent roofing claims. Here's how the claims typically originate:

- Roofers in Florida canvas neighborhoods and offer homeowners inspections. The contractors then conveniently find damage on the homeowner's roof and promise a new one in exchange for the homeowner's signature on an Assignment of Benefits (AOB) form.
- The AOB gives contractors the right to file the claim on the property owner's behalf. Now, the dispute is solely between the contractor and the insurance company.

² Mark Friedlander, "Triple-I: Extreme Fraud and Litigation Causing Florida's Homeowners Insurance Market's Demise, Insurance Information Institute," retrieved from <https://www.iii.org/press-release/triple-i-extreme-fraud-and-litigation-causing-floridas-homeowners-insurance-markets-demise-062322> accessed on November 15th, 2022.

³ Jim Saunders and News Service of Florida, "Citizens, Florida's Property Insurance of Last Resort, Grew by 50 Percent in 2022," retrieved from <https://www.cltampa.com/news/citizens-floridas-property-insurance-of-last-resort-grew-by-50-percent-in-2022-14873472>, accessed on November 20th, 2022.

- The insurance company investigates the claim and finds that the damage is minimal compared to what the contractor initially requested. This results in a smaller payout than what the contractor demanded.
- After being refused the demanded claim payout, the contractor results to legal action against the insurance company. The insurance company is then left with two choices: (1) Pay the cost of litigation to fight the claim in court; or (2) Pay to settle the cost outside of court. Regardless of what option is chosen, the insurance company is forced to pay a fee as a result of legal action.

The burden of litigation is causing serious financial obstacles for insurers:

- Mark Friedlander, Director of Corporate Communications at the Insurance Information Institute (Institute) recently reported that before Hurricane Ian, Florida property insurers were projected to post a cumulative underwriting loss of \$1 billion for 2021. ⁴
- The Institute adds that there were 116,000 property claim lawsuits in 2021 while the projected amount of claims for 2022 was 130,000 before Hurricane Ian. ⁵
- The number of claims in Florida compared to the rest of the nation is substantially disproportionate. Florida accounts for only nine percent of the country's home insurance claims while making up 79percent of the country's home insurance lawsuits. ⁶
- According to former Senator Jeff Brandes, "Other states had less than 1,000 homeowner's insurance litigations last year. We had 107,000, even though there was no storm."

How will Hurricane Ian affect property insurance?

According to RMS, a catastrophe modeling firm, privately insured losses from Hurricane Ian are expected to reach \$67 billion, which would make the storm one of the largest insured loss events in U.S. history. If this is the case, property insurance companies will have to compensate for losses by continuing to raise premiums, increase policies, or cancel them altogether.⁷

⁴ Becky Sullivan, "Florida's Property Insurance Market Was Already under Stress. Ian Could Make It Worse," retrieved from <https://www.npr.org/2022/10/06/1127083845/hurricane-ian-florida-property-insurance>, accessed on November 10th, 2022.

⁵ Chris Isidore, "Florida's Home Insurance Market Was a Mess before Ian. It's about to Get Worse | CNN Business," retrieved from <https://www.cnn.com/2022/09/30/business/florida-homeowners-insurance-ian/index.html>, accessed on November 10th, 2022.

⁶ Lydia Vazquez, "'Under Attack by Fraudsters': Florida's Insurance Industry Is in Trouble, State CFO Says," retrieved from <https://www.abcactionnews.com/news/region-hillsborough/florida-a-factory-of-litigation-for-insurance-claims-florida-cfo>, on November 10th, 2022.

⁷ Moody's Risk Management Solutions, "RMS Estimates US\$67 Billion in Insured Losses from Hurricane Ian," retrieved from <https://www.rms.com/newsroom/press-releases/press-detail/2022-10-07/rms-estimates-us67-billion-in-insured-losses-from-hurricane-ian> on November 10th, 2022.

Significant increases in premiums and cancelled policies will drive thousands of more homeowners to make the switch to Citizens. The increasing number of homeowners making the switch due to a lack of private insurance options will cause Citizens to be in a vulnerable state for the next big storm:

- Florida property insurance rates have risen by 30 percent or more. If these rates continue to grow—as they have done in recent years—some Florida homeowners will be paying more for insurance than they do for their mortgage, according to Jeff Brandes.
- As of now, Citizens is confident that they will have enough to cover the damage from Hurricane Ian. Beyond that, it is likely that Citizens will stay afloat by surcharging insurance policies.
- According to the Citizens 2023 operating budget report, outgoing president Barry Gilway and company CFO Jennifer Montero state that the expected number of policies insured will be close to 1.7 million, with “more than \$51 billion in premium volume.”⁸

How are lawmakers responding?

Legislators recently approved \$1.5 million of taxpayer money for the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) to research alternative ways to financially rate insurance companies. The money was allocated in efforts to research options besides Demotech that would give insurance companies an approvable financial rating for federally backed mortgages:

- Demotech—the Ohio-based company that’s been Florida’s primary agency for decades— has not changed its method of financially rating insurance companies. Despite this, officials want to explore the possibility of a public ratings agency. The question is whether federally backed mortgages such as Fannie Mae and Freddie Mac will accept these alternative options.

Florida’s May 2022 Special Session

Florida’s legislature had a special session between May 23rd and May 27th to address the current property insurance crisis. Senate Bill 2D was signed into law on May 26th, 2022. The bill contains efforts to financially relieve insurance companies, strengthen homeowners’ properties, and halt the increasing number of roofing scams in the state.

Reinsurance to Assist Policyholders Program

- \$2 billion was allocated to a Reinsurance to Assist Policyholders (RAP) Program under the Florida Hurricane Catastrophe Fund. The RAP program authorizes a \$2 billion reimbursement layer of reinsurance for hurricane losses.

⁸ Sam Sachs, “Florida’s Citizens Property Insurance Premium Volume nearly Doubles,” retrieved from <https://www.wfla.com/news/politics/floridas-citizens-property-insurance-premium-volume-nearly-doubles/> on January 10th, 2023.

- While insurers are not required to pay premiums for reinsurance, they must reduce rates to reflect savings. Insurers who accept the relief fund for 2022-2023 must reduce their rates by June 30, 2022. Insurers that accept the fund in 2023-2024 must reduce rates by May 1, 2023.

My Safe Florida Home Program

- \$150 million was appropriated to the Department of Financial Services 'My Safe Florida Home Program. The program is comprised of two main components: (1) Home inspections that recommend improvements for homeowners to mitigate hurricane damage will be provided free of charge; and (2) Eligible homeowners may apply for matching grants to perform the recommended home improvements that make them less vulnerable to hurricane damage.

Insurance and Legal Reform

- It will be required for property insurance companies to be transparent in the claims denial process so that consumers will have access to a thorough explanation for total or partial claim denials.
- Property insurance companies will be prohibited from denying policies based on the age of the homeowner's roof, but only if the roof is less than 15 years old and has five years of life left.
- Homeowners with older roofs may still be denied coverage.
- Attorneys will be limited in the amount they can collect from property insurance claims.

Florida's December 2022 Special Session

Lawmakers held a first special session in May to confront the property insurance crisis, but problems persisted. In attempts to address the complex situation, the Legislature held a second special session in December where they passed SB 2A. The bill aims to provide reinsurance options for property insurers, address attorney fees, regulate insurers, and reduce the number of Citizens policyholders.

Florida Optional Reinsurance Assistance (FORA) Program

- Legislators created the FORA program, an optional hurricane reinsurance that property insurers can purchase at reasonable/near market rates.
- Property insurers may participate in both FORA and the RAP program created in the May 2022 special session.
- The Legislature also allocated \$1 billion in general revenue to supplement the premiums insurers pay into the program.

Attorneys Fees

- The bill eliminates one-way attorney fees under a residential or commercial property insurance policy. This means that each party in a property insurance claims lawsuit is responsible for payment of their own attorneys fees.

- Attorney fees are now available for the prevailing party in offers of judgment (proposals for settlement) in property insurance cases.
- Only joint offers of judgment contingent on the acceptance of all joint offerees are allowed.

Assignment of Benefits

- The bill prohibits the assignment of any post-loss insurance benefit under any residential or commercial property insurance policy issued on or after January 1, 2023.
- This means that Assignment of Benefits are no longer an option to be used in property insurance claims. If a property insurance policy is issued on or after January 1, 2023, the insurance benefits may not be signed over to a third party.

Insurance Regulation by the OIR

The bill enhances the Office of Insurance Regulation's ability to do market conduct examinations of property insurers after a hurricane:

- Allows OIR to discipline insurers for abuse of the appraisal process; review insurers' forms and suspend their ability to use appraisal for up to two years (policyholders can still use it); and identify insurers that abuse the appraisal process on the OIR's website.
- Authorizes the OIR to extend the coverage period for insolvent insurance companies by 15 days if there is reasonable belief that market conditions prohibit policies from being placed with an authorized insurance company within the given 30-day period.

Citizens Property Insurance

- The bill aims to realign Citizens with its mission to be the insurer of last resorts by making policyholders ineligible for coverage if market premiums are within 20 percent of Citizens' premiums.
- It requires Citizens' policyholders to obtain flood insurance by 2027 and authorizes Citizens to combine its three policyholder accounts into a single account to allow Citizens to use its entire surplus to pay claims.

What's next?

The primary focus of May's special session was property insurance reform to stabilize Florida's property insurance market in advance of hurricane season. Although some provisions were passed, efforts to reduce premiums and to disincentivize mass amounts of lawsuits were minimal.

Legislators are confident that Florida's insurance market will become significantly more competitive following December's Special Session. Florida House Speaker Paul Renner stated that the legislation will not only create more competition in the insurance market for Florida but will also provide notable measures that reduce frivolous lawsuits while holding insurers accountable to consumers.

Unfortunately, some measures will take time to demonstrate notable change, particularly for homeowners. Some worry that December's session prioritized the competition of insurance companies rather than guaranteeing financial relief for homeowners. Mark Friedlander notes that "it will take time to see positive impacts of the legislative reform. We expect home insurance rates in Florida to remain high in 2023 due to expenses associated with ongoing litigation, combined with soaring reinsurance rates and double-digit replacement cost increases driven by escalating prices of construction materials and labor."

After the measures taken in recent sessions, there is hope for Florida's property insurance crisis. Legislators have taken action to protect companies and policyholders from financial strength rating downgrades and reduce fraudulent claims and scams within the state. The question is how long it will take for homeowners to see relief and if the measures taken are enough to save a market in crisis.